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**MCOC Special Case No. 737/2021**  
(CNR-MHPU01-014080-2021)

State of Maharashtra

Vs.

Bala @ Jagdish Popat Darade & Ors.

**ORDER BELOW EXH. 28**

1] By this application, the applicant – **Shubham Omprakash Kharade** is seeking regular bail under section 439 of Criminal Procedure Code read with Section 21 (4) of MCOC Act in connection with CR No. 430/2020 registered with Bhigwan police station, Pune for the offences punishable under Section 307, 397, 452, 427, 506, 34 of Indian Penal Code, u/s. 3 (25) of Arms Act and section 3 (1) (ii), 3 (4) of MCOC Act.

2] Read application, say given by the learned Spl. P.P. Heard both sides at length and gone through the charge-sheet.

3] **Brief facts :**

It is the case of Complainant that, on 30/11/2020 at 1.00 a.m. the co-accused – Bala Darade and Vijay Gokhna with three unknown persons broke the door and entered the house and afterwards the accused started beating the Complainant with iron bar on his head and legs. After beating, the accused took the Titan watch and wallet containing Rs. 2500/-. It is further alleged that, when Complainant's wife namely Yogita

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came to rescue Complainant, at that time, the accused nos. 1 and 2 and third unknown person squeezed her throat and took the gold ring from her finger. There were two unknown people standing outside the house of Complainant. Those shouted from outside and told the other co-accused " Sanjayla khallas kara, tyala jeevant sodu naka, aamhi konhala yeu det nahi." Afterwards, the co-accused again started beating the Complainant with iron bar on his legs and stomach and tried to kill the Complainant. After listening the Complainant and his wife, the family members of Complainant shouted. The people gathered. Then accused removed the pistol and put it on the head and threatened Complainant. Lateron, all the five accused boarded in a white colour four wheeler and ran away. The informant approached to police station Bhigvan and lodged his FIR against five persons.

4] During the course of investigation, the accused arrested. The provisions of MCOCA was applied by obtaining approval u/s. 23 (1) of the said Act, which was granted. The sections 3 (1) (ii), 3 (4) of MCOC Act added.

### ARGUMENTS

5] The learned counsel for the applicant has urged that, there is no material to rope the applicant for the alleged offences punishable under the Penal Code much less for the offences punishable under MCOC Act. Amplifying the submissions of Mr. P. N. Dombale laid emphasis on the fact that the applicant was not at all

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named in the First Information Report. On the aspect of invocation of provisions contained in MCOC Act, Mr. P. N. Dombale urged with a degree vehemence that there is not a shred of material to show that the applicant is involved in any unlawful activities. No crime has been registered against the applicant. Nor there is any material to establish the nexus of the applicant with the alleged continuing unlawful activities. In these circumstances, the invocation of provisions contained in MCOC Act is wholly unsustainable and suffers from the vice of complete non-application of mind. The applicant cannot be deprived of his personal liberty on the basis of such bald and unsubstantiated allegations.

6] Mr. P. N. Dombale pointed out that, the applicant has no motive to commit present crime. No specific role is attributed to the present applicant in the alleged crime. The name of the applicant is not mentioned in the FIR. The false case has been fastened against the applicant and it is submitted that the prosecution has come out with concocted story, which full of all events and eventualities. The applicant is having deep roots in the society. As per the allegations in the FIR, the applicant has not snatched any of the ornaments either from the Complainant or his wife. The investigation is over and charge-sheet is filed. The crime chart as against the applicant do not show that the offences committed on behalf of the organized crimes syndicate or as its members individually and / or collectively. The applicant

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is ready to abide all the terms and conditions, which will be imposed by the Court. On these grounds, he prayed to enlarge the applicant on bail.

7] The learned Spl.PP. has vehemently opposed the application. He submits that there is prima facie evidence showing that the applicant is a member of Organized Crimes Syndicate, that the applicant had by his conduct has shown that he is prone to commit offences for pecuniary gains and that in the present crime the applicant had taken active part in committing dacoity and attempt to murder upon the Complainant, thereby showing his prima-facie culpability in the offences so registered against him.

8] It is further submitted that, the muddemal viz. one Samsung mobile phone, one iron bar, one Titan company watch and one wallet is recovered at the instance of applicant. According to him, as per the judgment of **Govind Ubhe Vs. State of Maharashtra**, there is no need that accused is having criminal antecedents. The only requirement is that accused is a member of organized crime syndicate is sufficient. Therefore, he submit that the prohibition prescribed under section 21 (4) of MCOC Act would come into play which would disentitles the applicant from seeking his release on bail. On these grounds, he prayed for rejection of the bail application.

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9] I have considered these submissions. I had gone through the entire charge-sheet. After perusal of material on record, it reveals that, the name of the applicant is not mentioned in the FIR. The allegations made against the present applicant is that, he along with 4 other accused-persons, being a member of organized crime syndicate committed dacoity on the point of weapon and attempted to commit murder of Complainant on 30/11/2020. Later on, as the investigation progressed, the investigating officer also found that this applicant and 4 other persons formed an organized crime syndicate which indulge in various activities prohibited under the law.

10] Perusal of the allegations in the subject crime do not point out this crime committed by the applicant in capacity as members of organized crimes syndicate either as its leader or on behalf of such crime syndicate. It may be stated that, mere number of filing charge-sheet in past is not enough. It is only one of the requisites for constituting organized crimes.

11] In the case in hand, no efforts were made by the prosecution to show in respect of which charge-sheets were filed, were committed by the applicant as members of organized crimes syndicate, i.e. acting as syndicate or a gang or on behalf of such syndicate. In the case of Ranjitsingh Sharma Vs. State of Maharashtra ( 2005 ALL MR (Cri) 1538 ), the Hon'ble Apex Court has laid

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down that, in order to examine whether the case of the applicant falls within the scope of section 21 (4) or not, it is necessary that, the court must be satisfied that, there is prima facie evidence against the applicant indicating commission of the offence under the provisions of MCOC Act and that there should be a reasonable possibility of the applicant committing the crime under the said Act. Thus, it was imperative on the part of prosecution to establish prima facie some nexus between the past crimes at the discredit of applicant and the present crime, which has not been shown by the prosecution nor the material on record suggests and indicates such nexus.

12] In the subject crime investigation is over and the charge-sheet has been filed. Applicant is in custody since 28/05/2021 and just completed 24 years of his age. Therefore, it would have to be said that so far as the present applicant is concerned, there is no record or no material available on record giving rise to the possibility of the applicant indulging in an offence under the MCOC Act in a reasonable manner. The co-accused – Rajendra @ Akya Mahadev Chaudher was released on bail. The role of the present applicant is on the same footing to that of co-accused – Rajendra Chaudher. Therefore, in my view, the applicant would be entitled to be released on bail. Hence, following order :

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**ORDER**

[1] Application (Exh. 28) is allowed.

[2] Applicant – **Shubham Omprakash Kharade** be released on bail in connection with CR No. 430/2020 registered with Bhigwan police station, Pune for the offences punishable under Section 307, 397, 452, 427, 506, 34 of Indian Penal Code, u/s. 3 (25) of Arms Act and section 3 (1) (ii), 3 (4) of MCOC Act, on executing PR. Bond of Rs. 25,000/- alongwith one or two solvent sureties of the like amount on the following conditions :-

(a) the applicant shall not tamper with the prosecution evidence in any manner whatsoever.

(b) the applicant shall attend the Court scrupulously, till the conclusion of trial.

[3] The applicant shall submit his detailed address together with telephone number and furnish cogent documentary evidence in respect of his residence before this court after his release on bail alongwith swearing an affidavit in that regard.

Pune  
Date : 04/04/2022

Sd/xxx  
(G.P. Agrawal)  
Addl. Special Judge,  
Under MCOC Act, Pune.

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**CERTIFICATE**

I affirm that the contents of this P.D.F file Order is same word for word as per original Order.

Name of Steno : S. Y. Shaikh,  
(Stenographer Grade-I)

Court Name : G. P. Agrawal  
Addl. Special Judge, Under  
MCOC Act,Pune.

Date of Order : 04/04/2022

Order signed by the  
Presiding Officer : 04/04/2022

Order Uploaded on : 04/04/2022